

TECHNICAL MEMORANDUM

Utah Coal Regulatory Program

February 15, 2005

TO: Internal File

THRU: D. Wayne Hedberg, Permit Supervisor

THRU: Wayne Western, Environmental Specialist, Engineer, Team Lead

FROM: Jerriann Ernstsens, Ph.D., Environmental Specialist, Biologist

RE: North Lease Subsidence Mining, Canyon Fuel Company, Skyline Mine, C/007/0005, Task ID #1976

SUMMARY:

The Division received an amendment, on July 1, 2004, that addresses undermining perennial streams within North Lease at the Skyline mine. This memo describes the review of the biology and archeology sections for the amendment.

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TECHNICAL ANALYSIS:

GENERAL CONTENTS

PERMIT APPLICATION FORMAT AND CONTENTS

Regulatory Reference: 30 CFR 777.11; R645-301-120.

Analysis:

The Mine and Reclamation Plan (MRP) does not meet R645-301-121.200 because of editorial or clarity issues associated with the Biology and Land Use chapters. The Permittee must clarify the following pagination issues: there are missing pages (2-62, 2-63a through 2-63d) and an incomplete copy of page 2-132.

Findings:

Information provided in the plan does not meet the minimum Permit Application Format and Contents in General Contents requirements of the regulations. Prior to approval, the Permittee must act in accordance with the following:

R645-301-121.200, Clarify the following pagination issues: there are missing pages (2-62, 2-63a through 2-63d) and an incomplete copy of page 2-132.

REPORTING OF TECHNICAL DATA

Regulatory Reference: 30 CFR 777.13; R645-301-130.

Analysis:

The MRP meets R645-301-130 because qualified professionals conducted or directed the surveys and analysis for the supporting biologic- and historic resource- related documents.

There are mislocated confidential documents in certain volumes. The Permittee will attend to these documents as a response to the Division's request dated December 8, 2004.

Findings:

Information provided in the plan meets the minimum Reporting of Technical Data in General Contents requirements of the regulations.

ENVIRONMENTAL RESOURCE INFORMATION

Regulatory Reference: Pub. L 95-87 Sections 507(b), 508(a), and 516(b); 30 CFR 783., et. al.

HISTORIC AND ARCHEOLOGICAL RESOURCE INFORMATION

Regulatory Reference: 30 CFR 783.12; R645-301-411.

Analysis:

The MRP meets R645-301-411 regulations pertaining to historic resources. The MRP (see Confidential Files in Division PIC room after June 2005) includes evaluations of historic resources that focus on the permit area. It also includes narratives and maps, which describe and show locations within or adjacent to specific projects, of historic resources that may be included in or eligible for inclusion in the National Register. There is proof of coordination efforts and clearances from the SHPO.

U.S. Forest Service Lease Stipulation #1 requires a cultural resource inventory and a paleontological appraisal of the areas to be undermined.

Section 2.1.1 discusses the cultural, historical, and archeological resources. This section refers to the 1995 Environmental Assessment (EA), App. B (Criterion Number 7), which states that there are no properties included in the National Register of Historic Places on or near the proposed lease tract. Section 2.1.1 also refers to page 10 Section H of the EA, which states "Leasing of the tract should not result in significant impacts to cultural or paleontological resources." A copy of the EA is provided for in App. A-2. Section 2.1.1, p. 2-4b refers to the Archeological Environmental Research Corporation (AERC), reports.

Section 2.1.1, p. 2-4b refers to a 1996 AERC report entitled "Cultural Resource Evaluation of Proposed Drillholes and Associated Access Routes in the Upper Winter Quarters Canyon and Winter Quarters Ridge Locality of Carbon County, Utah." The report states, "No previously recorded significant or National Register eligible cultural resources will be adversely effected by the proposed developments. No isolated artifacts were observed during the evaluation. No paleontological loci were identified during the evaluation. No newly identified

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cultural resource activity loci were discovered during the examination.” This document is provided for in App. A-2.

Findings:

Information provided in the plan meets the minimum Environmental -Historic and Archeological Resource Information requirements of the regulations.

VEGETATION RESOURCE INFORMATION

Regulatory Reference: 30 CFR 783.19; R645-301-320.

Analysis:

The MRP does not meet R645-301-321 because there is inadequate discussion of plant communities observed within the permit area.

The following Forest Service Stipulations attached to the lease require vegetation baseline information: Lease Stipulation #2 (T & E species), Stipulation #3 (baseline data), Stipulation # 7 (monitoring of effects), Stipulation #9 (“Except at specifically approved locations, underground mining operations shall be conducted in such a manner so as to prevent surface subsidence that would: ...(3) damage or alter the flow of perennial streams.”

In Section 2.7.1, the application summarizes the vegetation communities for the North Lease as outlined in the EA (1995). The application indicates that the ridgetops are mountain grassland communities (where mountain brome *Bromus carinatus* and slender wheatgrass *Elymus trachycaulus* are dominant) and sagebrush-grass (where Vasey sagebrush *Artemesia tridentate* var. *vaseyana*; rabbitbrush *Chrysothamnus viscidiflorus*; Louisiana sagewort *Artemesia ludoviciana* are also dominant.) Section 2.7.1 also indicates:

- There are a few, productive, small meadows dominated by bluegrass with some sedges and carex.
- Riparian areas exist along streams and at seeps and springs.
- The vegetation along the waters edge consists of species of carex, bluegrass, and to a lesser extent sedges.
- Some willow is present along the streams.

Vegetation of the North Lease is discussed in Sec. 2.7.6 of the MRP and in App. A2. CFC agreed to provide aerial photographs as baseline data. They committed to take pictures annually starting August 2002. A qualified biologist will review the pictures.

Section 2.7.6 provides summary of a vegetation overview (Patrick Collins 1992). The main points of the overview include that the Aspen community is the most common vegetation type of the Winter Quarters tract area (North Lease). Along with snowberry *Symphoricarpos oreophilus* and Oregon grape (*Mahonia repens*) are the dominant understory. Also important by relative acreage are the communities of Engelman spruce *Picea engelmannii* and subalpine fir *Abies lasiocarpa* with an understory of gooseberry currant *Ribes montigenum*.

Exhibit 2.7.5 of App. A2 (Collins 1992) provides a summary of existing Forest Service vegetation information. The report concludes that “riparian and wetland vegetation was not specifically mapped” by the USFS and “these areas should be mapped if the lease area is pursued...”

The USFS is progressing towards electronic mapping of the Manti LaSal National Forest. In 2002, the Division previewed the electronic mapping information available in draft form and found riparian and wetland designations have yet to be added.

The MRP states that a vegetation evaluation of the riparian areas in the North Lease area would take place in early summer of 2003 (Vol. 1A, p. 2-61d). However, Patrick Collins conducted a Level II (USFS) site-specific qualitative vegetation evaluation (*Riparian plant community survey near Scofield, Utah* App. A-2) in late October of 2002. Dr. Collins evaluated four and seven sites along Woods and Winter Quarter Canyon stream channels, respectively. The report includes colored pictures of all the sampling sites. Additional pictures of sites between the sampling sites are available. The pictures clearly show that the stream channels were snow-covered. The report includes field notes that also support that data collection was difficult at certain sampling sites because of snow or ice.

The Permittee plans to conduct a Level III survey that includes transect lines that dissect the riparian plant communities of these stream channels in 2005. The Division reminds the Permittee to include site descriptions, a stream channel map, productivity information for riparian and wetland areas, and the total acreage for each vegetation type for the North Lease stream channels (R645-301-322.100). The Division and USFS resolved that the Permittee must also commit and describe plans to conduct vegetation surveys one and five years after undermining the North Lease stream channels (R645-301-322.220). The agencies consider that the aerial surveys are not specific enough to evaluate possible impacts to the surface. If results show that mining operations are impacting the riparian areas, the MRP must describe protection measures (refer to R645-301-333.300).

Findings:

Information provided in the plan does not meet the minimum Environmental - Vegetation Resource Information requirements of the regulations. Prior to approval, the Permittee must act in accordance with the following:

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R645-301-322.100, Include in the vegetation surveys site descriptions, a stream channel map, productivity information for riparian and wetland areas, and the total acreage for each vegetation type for the North Lease stream channels. Some or all of these items were not part of the Level II survey in 2002.

R645-301-322.220, Commit to and describe plans to conduct vegetation surveys one and five years after undermining the North Lease stream channels.

FISH AND WILDLIFE RESOURCE INFORMATION

Regulatory Reference: 30 CFR 784.21; R645-301-322.

Analysis:

GENERAL WILDLIFE

The MRP does not meet R645-301-322 because there is not adequate discussion, supporting documentation, or maps on fish and wildlife resource for the permit and adjacent areas. There is insufficient information to design the protection and enhancement plan.

The fish and wildlife information is provided in Sections 2.8 through 2.10 of the MRP, and Vol. 1A of the MRP. Sec. 2.1.2, and 2.7.6, and 2.10.2 discuss Threatened, Endangered, and Sensitive (TES) species. Sections 2.8, 2.9 and 2.9-5 discuss aquatic and terrestrial wildlife information. Sections 2.10 and 2.10.2 discuss raptors. Avocet Consulting Inc. has been included in section 2.1 of the application as the firm that conducted the Ground Surveys for Nesting Raptors.

On October 24, 2002, agencies discussed raptor monitoring, three-toed woodpecker monitoring and a survey protocol for macroinvertebrate and fish sampling. USFS indicated they did not need additional monitoring for raptors and the three-toed woodpecker for the proposed North Lease addition. They also provided the following comments:

- Northern goshawk was not likely to be affected by subsidence
- No impacts likely to the three-toed woodpecker
- Wolverine had not been seen in Utah for many years
- Boreal toad habitat may be present but would be evaluated during the mollusk and amphibian survey
- No bats in the proposed lease area
- Sage Grouse were noted in adjacent areas.

Although the USFS provided these comments, the Permittee commits to conducting goshawk, amphibian, and three-toed woodpecker surveys.

Ungulates

The Utah Natural Heritage Program database shows the entire North Lease area as critical value elk summer use area and a high value deer summer. Drawing 1.6-3 has been revised to include the additions to the permit area that includes critical value summer deer and elk and high value winter moose habitats.

Macroinvertebrates, Fish, and other Aquatics

The Permittee committed to conduct macroinvertebrate and fish survey, using specific protocols, during early summer 2003 prior to proposed subsidence for 2004. The protocol for the macroinvertebrates included surveying Winter Quarters and Woods stream two times a year (fall and spring) for two consecutive years and then every three years or for a period determined by the Division and other agencies (including the USFS) until data supports a population trend (p.2-71a). CFC must conduct the surveys two years before longwall mining and at least two years after mining and subsidence ceases in the area.

Dennis Shiozawa conducted the first set of macroinvertebrate surveys for Winter Quarters and Woods streams in fall 2002 and spring 2003 (*Baseline monitoring of the benthos in Winter Quarters Canyon Creek and Woods Canyon Creek*). This report is missing from App. Vol. A-3 (p. 2-71a). The Permittee must resend this report along with a cover sheet and C1C2 form for this amendment (R645-301-322.100).

The Permittee conducted the second set of surveys in 2004. The Division will receive this report immediately after compilation sometime in 2005. The two years of surveys will provide a pre-mining baseline for densities and taxa. The surveys will also provides sensitivity and diversity values that may help demonstrate seasonal effects and understand population trends.

The Division also required CFC to conduct fish and amphibian surveys for North Lease area. The survey protocol for the fish includes using a multi-pass electro-fishing technique to estimate fish populations. The surveys were supposed to begin in the fall of 2003 and then every third year (p. 2-71b). CFC stated that they conducted fall and early summer fish and macroinvertebrate surveys for Winter Quarters Canyon and Woods Canyon streams during fall 2002 and summer 2003 (App. A-3). The Division, however, cannot find the fish report. CFC must provide the missing report (R645-301-322.100).

The Permittee plans to schedule the amphibian surveys for the North Lease one year prior to undermining. The Permittee must provide the commitment to survey for amphibians and for

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their habitat, focusing especially the boreal toad and spotted frog. The Permittee must clarify the timing of the surveys, survey during the optimum season for sitings, and use the best methods recommended by the Division and USFS. (R645-301-322.100). If results are positive for the amphibians, the MRP must describe protection measures (refer to R645-301-333.300).

The Division asked CFC for information on the perennial nature of the streams and the reaches of the streams in the Environmental Resources Hydrologic Resource Information section of this TA. During a field visit to the proposed lease area on September 27, 2002, it was noted that water was flowing in Winter Quarters Creek, three unnamed tributaries and Bob's and Box Canyons. There is an established riparian corridor along the main-stream channel. An unnamed side canyon to the south (approximately 1-mile from the USFS boundary) was flowing, but had been dammed by beaver activity. Fish were also observed in the lower reaches of the main stream near the east permit boundary.

Migratory and Game Birds, and Raptors

The Permittee states that a raptor survey was conducted in 2003 for the North Lease area. This survey was a ground survey only for the northern goshawk (Annual Report 2003) and did not include a fly-over survey for cliff dwellers.

The Permittee states that there are no plans for surface disturbance for the North Lease (Vol. 1A, p. 2-111b). One concern of the Division, however, is the potential loss cliff habitat for breeding, nesting, and roosting as a result of surface facilities as well as from subsidence. The Permittee must commit to conducting raptor surveys to obtain baseline data within one year prior to subsidence of cliff habitat (R645-301-322). The Permittee must also conduct follow-up surveys within one year if nests were observed during the baseline surveys and if operations resulted in subsidence. The baseline and follow-up surveys will help assess the degree of impact to the nests. These efforts will help the Division, USFS, and DWR develop a mitigation plan, if necessary (refer to R645-301-322, R645-301-332).

THREATENED, ENDANGERED, AND SENSITIVE ANIMAL/PLANT SPECIES

In order for a person to conduct official surveys, they must fulfill the following sequential requirements: belong to the permit holding corporation, pass the species-specific course and exam, submit the application for permit to the USFWS, and record name to the corporate permit records.

The MRP does not meet R645-301-322 because there is inadequate discussion, supporting documentation, or maps on TES species that could occur within or adjacent to the permit area to plan for protection.

Section 2.1.2 indicates that there have been no threatened or endangered (TE) species identified on the project or adjacent areas. Section 2.7.6 indicates that there will be no surface impacts within the permit area and therefore no impacts to threatened, endangered, endemic or sensitive species.

The Utah Natural Heritage Program database shows no records of occurrence of threatened, endangered, or sensitive plant or animal species for the North Lease area.

According to the 1995 EA written jointly by the USFS and the BLM, the listed threatened, endangered and/or sensitive species that may occur within the proposed lease area are the bald eagle, northern goshawk, and northern three-toed woodpecker. Suitable bald eagle nesting habitat does not occur in the permit area. The bald eagle would only occur as a winter resident and surveys will not be conducted.

The northern goshawk is a USFS sensitive species that requires general presence-absence surveys in and adjacent to development areas, including the Skyline permit area. This species is a tree-nesting bird, therefore, requires ground surveys. The USFS surveyed for the goshawk in 2002 and placed an exclusionary 0.5-mile buffer zone around the nesting site (Vol. 1A, p. 2-111a).

The Permittee plans to schedule the goshawk survey for the North Lease one year prior to undermining habitat. CFC must provide the commitment to survey the goshawk and clarify the timing of the surveys (R645-301-322.100). If results are positive for the goshawk, the MRP must describe protection measures (refer to R645-301-333.300).

The Division, in consultation with other agencies, required CFC to conduct a survey for the three-toed woodpecker. CFC must provide the commitment to survey the three-toed woodpecker and clarify the timing of the surveys (R645-301-322.100). If results are positive for the three-toed woodpecker, the MRP must describe protection measures (refer to R645-301-333.300).

Plants

The Intermountain Proposed Endangered, Threatened, and Sensitive Species List, last updated in January 1999, indicates that there may be endangered species that inhabit the Manti La Sal area. In researching the potential occurrence of each of these species in more detail, CFC approached USFS Manti La Sal District Botanist who stated, "none of the currently listed TE species or sensitive species are found in the Winter Quarters lease area" (p. 2-63f).

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Findings:

The Division considers information in the application inadequate to meet the minimum Fish and Wildlife Resource Information section of the Environmental Resource Information regulations. Prior to approval, CFC must act in accordance with the following:

R645-301-322.100, Resend the report: *Baseline monitoring of the benthos in Winter Quarters Canyon Creek and Woods Canyon Creek* along with a cover sheet and C1C2 form for this amendment. • Provide the missing fish survey report for Winter Quarters and Woods stream. • Provide the commitment to survey for amphibians and for their habitat, focusing especially the boreal toad and spotted frog. Clarify the timing of the surveys, survey during the optimum season for sitings, and use the best methods recommended by the Division and USFS. • Provide commitments to survey the goshawks and three-toed woodpecker as well as clarify the timing of the surveys.

R645-301-322, Commit to conducting raptor surveys to obtain baseline data within one year prior to subsidence of cliff habitat. Conduct follow-up surveys within one year if nests were observed during the baseline surveys and if operations resulted in subsidence.

OPERATION PLAN

PROTECTION OF PUBLIC PARKS AND HISTORIC PLACES

Regulatory Reference: 30 CFR784.17; R645-301-411.

Page 10 Section H of the Environmental Assessment for the lease area states “Leasing of the tract should not result in significant impacts to cultural or paleontological resources.” According to App. B of the EA, there are no public roads, cemeteries, public buildings, or occupied dwellings within the proposed lease area. Supporting documents for these statements are provided in App. A-2 of the application.

Findings:

Information provided in the plan meets the minimum Operations - Protection of Public Parks and Historic Places requirements of the regulations.

FISH AND WILDLIFE INFORMATION

Regulatory Reference: 30 CFR Sec. 784.21, 817.97; R645-301-322, -301-333, -301-342, -301-358.

Analysis:

Protection and Enhancement Plan

The plan for the North Lease area includes undermining perennial streams. Potential disturbance may result from subsidence, which may affect habitat. CFC provides information supporting the unlikelihood of surface disturbance to the stream channels.

The DWR recently implemented a protection/mitigation agreement with the USFWS for the sage grouse. However, there will probably be no additional changes to the MRP concerning the grouse because there is no surface disturbance for facilities.

The Permittee plans to schedule the amphibians, northern goshawk, and three-toed woodpecker one year prior to undermining. If results are positive for any of these species, the MRP must describe protection measures (R645-301-333.300).

Endangered and Threatened Species

Colorado River Fish

Adverse result of mining on water quantity to the Colorado River drainages affects four Colorado River endangered fish species (Colorado pikeminnow [squawfish], humpback chub, bonytail chub, and razorback sucker). The USFWS considers depletions or significant changes to contributions to the Colorado River drainage as a potential jeopardy to these endangered fish. Water users may have to mitigate if there are considerable changes to contributions or if water consumption is greater than 100 acre-feet per year. Currently, the mitigation fee is approximately 16.00 per acre-foot of depletion, but may change marginally from year to year.

The Permittee must provide all equations and justifications with supporting documentation leading to the overall sum of water depletions or additions for all mining operations and explorations including dust control in the MRP section R645-301-333. (R645-301-333). The Permittee may use the following paper as a guideline "Windy Gap Process As It Applies To Existing Coal Mines In The Upper Colorado River Basin". In brief, consumption values must at least include the following:

- Mining consumption
- Ventilation consumption
- Coal producing consumption

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- Ventilation evaporation
- Sediment pond evaporation
- Springs and seep effects from subsidence
- Alluvial aquifer abstractions into mines
- Alluvial well pumpage
- Deep aquifer pumpage
- Postmining inflow to workings
- Coal moisture loss
- Direct diversions
- Dust suppression (not mentioned in Windy Gap).

Bald and Golden Eagles

Bald eagles are not common in the area during the winter but could occasionally fly through or roost in the proposed addition to the permit area. Mining would have negligible effects on these birds. The Forest Service stated that Bald Eagles are frequently seen around Scofield reservoir in October and November. After the reservoir freezes, the waterfowl leaves, as do the eagles.

Wetlands and Habitats of Unusually High Value for Fish and Wildlife

The perennial streams, springs and riparian areas within the proposed lease area are probable habitats of high value for fish and wildlife. The 1995 EA reports that the riparian habitat appears to be in excellent condition on the forest (in the North Lease area), but below the forest boundary to the east it has been heavily impacted by livestock grazing.

The Division realizes that the USFWS generally recommends to survey for stream, spring, and seep locations and to prepare a monitoring plan. The latest submittal provides updated-monitoring and vegetation information along the stream channels. The vegetation report did not include information for riparian areas adjacent to seeps and springs. The Permittee considers that subsidence will not impact seeps and springs and bases their conclusion on the study conducted in Burnout Canyon.

Streams, springs, and seeps may serve as refuge for isolated populations of benthic organisms, such as mollusks. Historical records for one rare mollusk (*Physella virgata*) exist for Carbon County. The 2002/2003 macroinvertebrate survey results only list one mollusk *Spaherium*. Future surveys may show positive results for other mollusks including the rare *Physella*.

Findings:

Information provided in the plan does not meet the minimum Operations - Fish and Wildlife Information requirements of the regulations. Prior to approval, the Permittee must act in accordance with the following:

R645-301-333.300, If results are positive for the amphibians, northern goshawk, three-toed woodpecker, the MRP must describe protection measures.

R645-301-333, Address possible adverse affects to the four Colorado River fish species by providing all equations and justifications with supporting documentation leading to the overall sum of water depletions or additions for all mining operations and explorations including dust control. The Permittee may use the following paper as a guideline "Windy Gap Process As It Applies To Existing Coal Mines In The Upper Colorado River Basin".

VEGETATION

Regulatory Reference: R645-301-330, -301-331, -301-332.

Analysis:

The MRP indicates in Section 2.7.6 that there is no anticipated surface effects to the North Lease permit area. Regardless, the Forest Service Lease Stipulation # 7 requires monitoring of effects of mining, as follows:

"The Lessee shall be required to establish a monitoring system to locate, measure and quantify the progressive and final effects of underground mining activities on the topographic surface, underground and surface hydrology and vegetation. The monitoring system shall utilize techniques, which will provide a continuing record of change over time and an analytical method for location and measurement of a number of points over the lease area. The monitoring shall incorporate and be an extension of the baseline data."

The MRP indicates in Section 4.17.5 that an aerial photogrammetric monitoring program will be used to "determine the effects of underground coal mining on surface renewable resources. The plan indicates that the monitoring program secures adequate baseline data prior to any subsidence to quantify the existing surface renewable resources...."

The MRP indicates (p. 2-63d) that aerial photographs were taken in August 2002 of the North Lease Tract to provide a baseline information. The Permittee plans to take annual aerial

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photographs, have a qualified person evaluate the data, and include a summary of the results in the Annual Report for the Skyline Mine (p. 2-63d). The MRP also describes color infrared aerial photography (CIR) on the same scale as the photogrammetric monitoring (Sec. 4.17.5). If results identify that mining operations are diminishing habitat, the MRP must describe protection measures (refer to R645-301-333.300).

The Permittee plans to take annual aerial photographs. The Division and USFS resolved that the Permittee must also commit and describe plans to conduct these aerial surveys one and five years after undermining the North Lease area (R645-301-322.220). The agencies consider that these follow-up surveys will provide evaluations of possible impacts to the surface.

Findings:

Information provided in the plan does not meet the minimum Operations - Vegetation requirements of the regulations. Prior to approval, the Permittee must act in accordance with the following:

R645-301-333.300, If results identify surface effects are diminishing habitat, the MRP must describe protection measures.

R645-301-322.220, Commit and describe plans to conduct the aerial surveys one and five years after undermining the North Lease area.

RECLAMATION PLAN

GENERAL REQUIREMENTS

Regulatory Reference: PL 95-87 Sec. 515 and 516; 30 CFR Sec. 784.13, 784.14, 784.15, 784.16, 784.17, 784.18, 784.19, 784.20, 784.21, 784.22, 784.23, 784.24, 784.25, 784.26; R645-301-231, -301-233, -301-322, -301-323, -301-331, -301-333, -301-341, -301-342, -301-411, -301-412, -301-422, -301-512, -301-513, -301-521, -301-522, -301-525, -301-526, -301-527, -301-528, -301-529, -301-531, -301-533, -301-534, -301-536, -301-537, -301-542, -301-623, -301-624, -301-625, -301-626, -301-631, -301-632, -301-731, -301-723, -301-724, -301-725, -301-726, -301-728, -301-729, -301-731, -301-732, -301-733, -301-746, -301-764, -301-830.

Analysis:

The Permittee does not plan to disturb the surface for facilities within the North Lease Permit Area. Therefore, there is no information in the submittal for reclamation of a disturbed area.

Findings:

The Division considers information in the application adequate to meet the minimum General Requirements section of the Reclamation Plan regulations.

RECOMMENDATIONS:

Do not approve the amendment until CFC addresses all deficiencies.

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